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JUDICIAL INTERPRETATION OF THE PLANNED UNIT DEVELOPMENT STATUTE IN PENNSYLVANIA

Rapid expansion of metropolitan areas and an increased demand for a variety of land uses has created an urgent need for re-evaluation of the institutional and legal devices used to guide growth. Traditional zoning ordinances and subdivision regulations¹ are often ineffective and insufficient to deal with modern housing and urban development problems.² The majority of zoning ordinances employ a lot-by-lot or "cookie-cutter" technique³ that creates a patchwork of homogeneous homes in sterile community units.⁴ The fear of administrative abuse

1. See generally *Goldblatt v. Town of Hempstead*, 369 U.S. 590 (1962); *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); *Village 2 at New Hope, Inc. Appeals*, 429 Pa. 626, 241 A.2d 81 (1968); *National Land & Inv. Co. v. Easttown Township Bd. of Adjustment*, 419 Pa. 504, 215 A.2d 597 (1965); *Eves v. Zoning Bd. of Adjustment*, 401 Pa. 211, 164 A.2d 7 (1960); 1 R. ANDERSON, *THE AMERICAN LAW OF ZONING* ch. 1 (1968); D. MANDELKER, *THE ZONING DILEMMA* ch. 3 (1971) [hereinafter cited as *ZONING DILEMMA*]; E. YOKLEY, *THE LAW OF SUBDIVISIONS* (1963); Johnston, *Developments in Land Use Control*, 45 NOTRE DAME LAW. 399 (1970); Yearwood, *Accepted Controls of Land Subdivision*, 45 J. URBAN L. 217 (1967).

2. See *Village 2 at New Hope, Inc. Appeals*, 429 Pa. 626, 241 A.2d 81 (1968); *ZONING DILEMMA*, *supra* note 1, at 21; *THE COMMUNITY BUILDERS HANDBOOK* 68 (Anniversary ed., McKeever ed. 1968) [hereinafter cited as *COMMUNITY BUILDERS HANDBOOK*]; Krasnowiecki, *Zoning Litigation and the New Pennsylvania Procedures*, 120 U. PA. L. REV. 1029 (1972); Sternlieb, Burchell, Hughes & Listokin, *Planned Unit Development Legislation: A Summary of Necessary Considerations*, 7 URBAN L. ANN. 71, 72-73 (1974) [hereinafter cited as *Sternlieb et al.*].

3. *Village 2 at New Hope, Inc. Appeals*, 429 Pa. 626, 629, 241 A.2d 81, 83 (1968); Hanke, *Planned Unit Development and Land Use Intensity*, 114 U. PA. L. REV. 15 (1965); Krasnowiecki, *Planned Unit Development: A Challenge to Established Theory and Practice of Land Use Control*, 114 U. PA. L. REV. 47 (1965) [hereinafter cited as *Krasnowiecki*].

4. ADVISORY COMM'N ON INTERGOVERNMENTAL RELATIONS, *URBAN AND RURAL AMERICA, POLICIES FOR FUTURE GROWTH* 108 (1968); J. DELAFONS, *LAND-USE CONTROLS IN THE UNITED STATES* 48 (1962); Krasnowiecki, *supra* note 3, at 47.

Such homogeneity is not only aesthetically displeasing but also socially harmful because it creates segregation along economic, social and racial lines. Newsom, *Zoning for Beauty*, 5 NEW ENGLAND L. REV. 1 (1969); Sager, *Tight Little Islands: Exclusionary Zoning, Equal Protection, and the Indigent*, 21 STAN. L. REV. 767, 780 (1969); Williams & Wacks, *Segregation of Residential Areas Along Economic Lines: Lionshead Lake Revisited*, 1969 WIS. L. REV. 827; Note, *Snob Zoning: Developments in Massachusetts and New Jersey*, 7 HARV. J.

of discretion has prompted legislatures to enumerate precise standards and criteria.⁵ Land use controls tend to be rigid and constraining because of the belief that they must be self-administering and non-discretionary.⁶

Planned Unit Development (PUD)⁷ was instituted to introduce more flexibility into the planning process. The PUD concept⁸ attempts to set aside predetermined land use controls in favor of greater administrative discretion for local authorities.⁹ "The task of filling in the particular district with real houses and real open spaces then falls upon the planning commission usually working in conjunction with an individual large scale developer."¹⁰ According to Professor Jan Krasnowiecki, one of the originators of the PUD concept and a participant in the drafting of a model PUD statute,¹¹ PUD establishes a procedure "under which a municipality would

LEGIS. 246 (1970); Note, *Suburban Zoning Ordinances and Building Codes: Their Effect on Low and Moderate Income Housing*, 45 NOTRE DAME LAW. 123 (1969).

5. Krasnowiecki, *Legal Aspects of Planned Unit Development in Theory and in Practice*, in THE FRONTIERS OF PLANNED UNIT DEVELOPMENT: A SYNTHESIS OF EXPERT OPINION 99, 100 (R. Burchell ed. 1973) [hereinafter cited as FRONTIERS].

6. The rigid and highly detailed requirements of standard controls are recognized as the reason for uniformity in dwelling design. *Id.*

7. Krasnowiecki, *supra* note 3, at 48; Mandelker, *Reflections on the American System of Planning Controls: A Response To Professor Krasnowiecki*, 114 U. PA. L. REV. 98, 99 (1965); Sternlieb, Burchell & Hughes, *Planned Unit Development: Environmental Suboptimization*, 1 ENVIRONMENTAL AFFAIRS 694 (1972) [hereinafter cited as *Planned Unit Development*]; Sternlieb *et al.*, *supra* note 2, at 72-76; Subcomm. of the Comm. of Public Regulation of Land Use, *Planned Unit Developments and Floating Zones*, 7 REAL PROP. PROB. & TR. J. 61 (1972). Planned Unit Residential Development is a more limited form of PUD in terms of the extent and variety of nonresidential uses included. In all other respects PURD is essentially the same concept as PUD.

8. For a discussion of the PUD concept that provides an excellent background with graphic illustrations see R. BURCHELL & J. HUGHES, *PLANNED UNIT DEVELOPMENT—NEW COMMUNITIES AMERICAN STYLE* (1972) [hereinafter cited as BURCHELL & HUGHES].

9. *Id.* at 23; FRONTIERS, *supra* note 5, at 100; *Planned Unit Development*, *supra* note 7, at 694.

10. Village 2 at New Hope, Inc. Appeals, 429 Pa. 626, 629, 241 A.2d 81, 83 (1968); *cf.* Chrinko v. South Brunswick Township Planning Bd., 77 N.J. Super. 594, 187 A.2d 221 (L. Div. 1963).

11. R. BABCOCK, D. MCBRIDE & J. KRASNOWIECKI, *SUGGESTED LEGISLATION FOR PLANNED UNIT RESIDENTIAL DEVELOPMENT* pt. II (1965) (Technical Bull. No. 52, Urban Land Institute).

be encouraged to *throw away the book* and sit down with the developer to negotiate a better product, hopefully a less expensive one for the consumer."¹²

The PUD concept is attractive for several reasons. It permits a mixture of land uses,¹³ promotes creativity in design (including both clustering and mixing of dwelling types),¹⁴ provides for open space either through public ownership or use and maintenance by the residents,¹⁵ and allows the developer to harmonize his design with the environmental features of his tract.¹⁶ PUD thus provides a flexibility that traditional zoning lacks.¹⁷ The planning agency exercises more control over developments under PUD than under zoning ordinances.¹⁸ In addition, the concept is readily adaptable to existing administrative institutions.¹⁹ Thus the PUD concept maximizes the developer's choices by minimizing legal impediments, gives greater discretion to the municipality by providing desirable flexibility, and minimizes environmental damage.²⁰

The great majority of communities adopting PUD provisions have included them in the local zoning ordinance. As an adjunct of the zoning ordinance, the PUD provision may take the form of a floating zone, a conditional use, or a special exception.²¹ Since the usual

12. FRONTIERS, *supra* note 5, at 107 (emphasis in original).

13. COMMUNITY BUILDERS HANDBOOK, *supra* note 2, at 100; Lloyd, *A Developer Looks at Planned Unit Development*, 114 U. PA. L. REV. 3, 4 (1965) [hereinafter cited as Lloyd].

14. Nelson v. South Brunswick Planning Bd., 84 N.J. Super. 265, 201 A.2d 741 (App. Div. 1964); COMMUNITY BUILDERS HANDBOOK, *supra* note 2, at 99-104; Krasnowiecki, *supra* note 3, at 49; Lloyd, *supra* note 13, at 4; cf. Chrinko v. South Brunswick Township Planning Bd., 77 N.J. Super. 594, 187 A.2d 221 (L. Div. 1963).

15. BURCHELL & HUGHES, *supra* note 8, at 29; COMMUNITY BUILDERS HANDBOOK, *supra* note 2, at 99-101; Hanke, *supra* note 3, at 19.

16. Lloyd, *supra* note 13, at 4.

17. *Planned Unit Developments and Floating Zones*, *supra* note 7, at 62; Comment, *Planned Unit Development*, 35 Mo. L. REV. 27 (1970).

18. BURCHELL & HUGHES, *supra* note 8, at 44.

19. *Id.* at 45; FRONTIERS, *supra* note 5, at 101; Sternlieb *et al.*, *supra* note 2, at 75-76. A single approving agency would consider the elements of development falling within both the zoning power (use, bulk and location) and subdivision control (streets, sidewalks, grading, lighting, etc.). See R. BABCOCK, D. McBRIDE & J. KRASNOWIECKI, *supra* note 11, at pt. II.

20. Mandelker, *supra* note 7, at 99.

21. Sternlieb *et al.*, *supra* note 2, at 76-77; see D. MANDELKER, CONTROLLING PLANNED RESIDENTIAL DEVELOPMENTS (1966) (ASPO monograph); *Planned Unit Developments and Floating Zones*, *supra* note 7, at 63.

judicial approach in conditional use and floating zone cases²² allows considerable planning agency discretion, much of the "real" planning occurs during the administrative review process.

Pennsylvania was one of the first states to enact PUD enabling legislation.²³ The state statute, based on Professor Krasnowiecki's model,²⁴ provides general requirements and standards that a PUD proposal must meet, establishes a two-step procedure for tentative and final approval, and specifies its relationship to other land use control provisions.²⁵ Pursuant to this statute, local governmental units enact planned residential development ordinances. The local boards then make the required statutory findings as specified PUD proposals are brought before it. The findings of fact include, but are not limited to, the following: (1) consistency with the comprehensive plan; (2) consistency with the zoning and subdivision regulations; (3) adequacy of the amount and purpose of common open space; (4) relationship between project design and public services; (5) effect of the plan on the neighborhood; and (6) consistency with the public interest.²⁶ Despite the straightforward procedure

22. See, e.g., *Rodgers v. Village of Tarrytown*, 302 N.Y. 115, 96 N.E.2d 731, 105 N.Y.S.2d 115 (1951); *Archdiocese of Portland v. County of Washington*, 254 Ore. 77, 458 P.2d 682 (1969).

23. PA. STAT. ANN. tit. 53, §§ 10701-12 (1972). The Pennsylvania PUD statute was enacted as a section of the Municipalities Planning Code, Pennsylvania's comprehensive enabling statute,

to encourage innovations in residential development and renewal so that the growing demand for housing may be met by greater variety in type, design and layout of dwellings and by the conservation and more efficient use of open space . . . , to provide a procedure which can relate the type, design and layout of residential development to the particular site and the particular demand for housing . . . , and to insure that the increased flexibility of regulations . . . is carried out . . . without undue delay

Id. at § 10701. For statutes from other states see note 50 *infra*.

24. See note 11 and accompanying text *supra*.

25. PA. STAT. ANN. tit. 53, § 10705(b) (1972):

The ordinance adopted pursuant to this article shall establish standards governing the density, or intensity of land use, in a planned residential development. The standards may vary the density or intensity of land use, otherwise applicable to the land under the provisions of a zoning ordinance of the municipality within the planned residential development

26. *Id.* §§ 10709(b)(1)-(6).

It is important to note that because "local officials do not like the responsibility that comes with a negotiated project" and because "many of them do not have the professional staff to feel secure that they are entering the negotiations as equals with the developer," they often prefer to have explicit requirements. *FRONTIERS, supra* note 5, at 107. Thus the PUD procedure, designed

provided by the statute, it was clear that the PUD's effectiveness would depend upon judicial reaction to the broad discretion allowed.

In *Doran Investments v. Muhlenberg Township Board of Commissioners*²⁷ appellant applied to the Township for tentative approval of a planned residential development as required by the state statute²⁸ and the local ordinance.²⁹ The Township board of commissioners denied approval,³⁰ and the developer appealed. The common pleas court affirmed.³¹ The Commonwealth Court of Pennsylvania reversed, holding that the developer had satisfied the standards for approval contained in the statute and was therefore entitled to approval. Although a welcome result for developers, the decision may well prove a setback for the PUD concept itself.

Doran's significance can best be appreciated by placing it in historical perspective.³² Prior to the enactment of express enabling legislation, planned unit development was possible only through liberal interpretation of existing standard enabling statutes and local land use control ordinances enacted pursuant thereto.³³ Al-

to encourage flexibility, begins to look like standard zoning as municipalities add an abundance of specific requirements.

27. 10 Pa. Commw. 143, 309 A.2d 450 (1973).

28. PA. STAT. ANN. tit. 53, § 10707 (1972). The statute emphasizes reducing potential hindrances that might burden the developer by attempting "to provide an expeditious method for processing a development plan for a planned residential development . . . and to avoid the delay and uncertainty which would arise if it were necessary to secure approval, by a multiplicity of local procedures . . ." *Id.*

29. The local ordinance prescribed a minimum land area for a planned residential development, overall density, maximum number of dwelling units per acre, and minimum requirements as to lot sizes for single family homes, building coverage, and off-street parking. The ordinance also required that the area be serviced by public sewer and water facilities. These and other requirements were more than adequately met by the developer in *Doran*. For a discussion of the basic considerations that must be undertaken prior to developing a local planned unit development ordinance see Sternlieb *et al.*, *supra* note 2.

30. Several reasons for denying tentative approval are listed in the Pennsylvania statute. PA. STAT. ANN. tit. 53, §§ 10709(b)(1)-(6) (1972).

31. 64 Berks County L.J. 159 (1972).

32. See BURCHELL & HUGHES, *supra* note 8, at 6-30. The historical perspective considered in the text is from the developer's point of view and provides a summary of the developer's concerns prior to the enactment of specific PUD legislation. Burchell and Hughes present a more theoretical view of the development of the PUD concept. *Id.*

33. *Id.*; see *Millbrae Ass'n for Residential Survival v. City of Millbrae*, 262 Cal. App. 2d 222, 69 Cal. Rptr. 251 (Ct. App. 1968); *RK Dev. Corp. v. City of Norwalk*, 156 Conn. 369, 242 A.2d 781 (1968); *Village 2 at New Hope, Inc.*

though PUD offered advantages in the abstract, its benefits were more than offset by the practical risks and legal hindrances involved in proceeding without express enabling legislation.³⁴ Developers, whose primary goal is profit maximization, discovered that the risks of proceeding without a specific PUD enabling statute could operate to diminish their profits.³⁵

A developer with a PUD plan for his parcel found that he could not accurately calculate his costs prior to submitting his plan to the planning commission for approval. A variety of factors created this uncertainty: the developer's plan was subject to administrative change until construction was completed;³⁶ the municipality's zoning³⁷ and subdivision ordinances,³⁸ as well as its comprehensive plan,³⁹ might require conformity with their provisions; and various hearing requirements posed the risk of further change and delay.⁴⁰ Moreover, neighbors challenging the developer could pursue objections raised at such hearings in court,⁴¹ in which case unclear judicial and administrative standards might result in more delay and thus compound the difficulty of calculating both the investment risk and return.⁴²

Appeals, 429 Pa. 626, 241 A.2d 81 (1968); ADVISORY COMM. ON CITY PLANNING & ZONING, U.S. DEP'T OF COMMERCE STANDARD CITY PLANNING ENABLING ACT OF 1928 §§ 12, 14-15 (1928); Comment, *Planned Unit Development*, *supra* note 17, at 28.

34. See generally Hanke, *supra* note 3.

35. *Id.* A detailed analysis of these risks is beyond the scope of this Comment. For a further discussion of planned unit development see 114 U. PA. L. REV. 3-135 (1965).

36. Lloyd, *supra* note 13, at 6-14.

37. *E.g.*, *Cleaver v. Board of Adjustment*, 414 Pa. 367, 200 A.2d 408 (1964); *Bilbar Constr. Co. v. Easttown Township Bd. of Adjustment*, 393 Pa. 62, 141 A.2d 851 (1958).

38. Flynn, *Practical Problems of a Subdivider's Counsel in Creating a Subdivision*, 58 ILL. B.J. 110 (1969); see, e.g., *Forest Constr. Co. v. Planning & Zoning Comm'n*, 155 Conn. 669, 236 A.2d 917 (1967); *Burke & McCaffrey, Inc. v. City of Merriam*, 198 Kan. 325, 424 P.2d 483 (1967); *Noble v. Chairman & Township Comm'n*, 91 N.J. Super. 111, 219 A.2d 335 (App. Div. 1966). See generally Nelson, *The Master Plan and Subdivision Control*, 16 MAINE L. REV. 107 (1964); Yearwood, *Subdivision Law: Timing and Location Control*, 44 J. URBAN L. 585 (1967).

39. Haar, "In Accordance With a Comprehensive Plan", 68 HARV L. REV. 1154 (1955).

40. Krasnowiecki, *supra* note 3, at 53, 85-88.

41. *Id.* 55-63.

42. *Id.* at 65-66; Lloyd, *supra* note 13, at 6-8;

With the enabling statutes vague, precedents small in number or nonexistent,

Finally, if local approval of the plan was also required, the plan was subject to additional major changes.⁴³ The possibility of plan changes at each checkpoint transformed the innovative PUD plan into a highly speculative economic venture that few developers wished to undertake.⁴⁴ The potential for extensive delays was reflected in bank financing costs.⁴⁵ Practical production problems arose as sub-contractors attempted to accommodate plan modifications by developing new construction methods and retraining their work forces.⁴⁶ In addition, the developer faced the risk of incorrectly "gauging the market," a pitfall inherent in any new venture.⁴⁷ The uncertainties confronting the PUD developer clearly made the standard subdivision plan a wiser choice in the absence of specific PUD enabling legislation.⁴⁸

Enacting a statute with a view toward obviating these problems is an essential first step to a successful PUD program.⁴⁹ After enactment, however, the PUD concept cannot become a workable tool for land use control unless the judiciary interprets the new PUD provisions⁵⁰ to permit negotiation between the local agency and

and court decisions devoid of a reliable pattern of interpretation, planned unit developments are highly vulnerable to challenge. Not only an applicant's attorney, but the town's attorney as well, will have to meet charges of spot zoning, contract zoning, arbitrary or discriminatory treatment, contravention of existing zoning regulations, poorly defined administrative jurisdiction or presence of procedural defects.

Id. at 7.

43. The Pennsylvania planned residential development statute seeks to minimize the adverse effects of change or threat of change by the municipal governing body. An approved PUD plan is not subject to zoning or subdivision regulations nor to any other modification except with the consent of the landowner. PA. STAT. ANN. tit. 53, § 10711(d) (1972). It is possible, however, that political forces could be brought to bear upon the landowner to bring about changes.

44. Krasnowiecki concisely states the problem: "Is [the developer] likely to litigate, when the simple answer to his complaint is that he can always go to standard development?" Krasnowiecki, *supra* note 3, at 65.

45. Lloyd, *supra* note 13, at 10-12.

46. *Id.* at 12.

47. *Id.* at 12-13.

48. See note 42 *supra*.

49. Comment, *Planned Unit Development*, *supra* note 17, at 42.

50. Several states have enacted specific PUD legislation. *E.g.*, COLO. REV. STAT. ANN. §§ 106-6-1 *et seq.* (Cum. Supp. 1971); CONN. GEN. STAT. ANN. §§ 8-13b to -13k (Supp. 1973); KAN. STAT. ANN. §§ 12-725 to -733 (Supp. 1972); N.J. STAT. ANN. §§ 40:55-54 to -67 (1974); PA. STAT. ANN. tit. 53, §§ 10701-12

the developer. The statute in *Doran* did not make clear the extent of the local board's discretion in its application of the statutory standards. The choice of floating zones, conditional uses, and similar discretionary zoning techniques to implement PUD, however, suggested an intent to allow the municipality considerable discretion in deciding whether, in each case, the statutory standards had been met. The *Doran* court foreclosed this possibility⁵¹ by holding that once the standards set forth in the planned unit development statute and ordinance have been met, tentative approval *must* be given.⁵²

Appellee-Township based its denial of the planned residential development's tentative approval on several grounds. First, the Township argued that since analogous sections of the Municipalities Planning Code dealing with the official map,⁵³ subdivision developments,⁵⁴ and zoning ordinances⁵⁵ contained provisions that either directly or indirectly require compliance with the comprehensive plan, the proposed development must similarly conform to the comprehensive plan. The Township specifically alleged that *Doran's* development did not meet the comprehensive plan's density requirements and that it encroached on land designated by the comprehensive plan for a public school.⁵⁶ The court, however, found that the statutory language requiring that PUD applications be based upon the comprehensive plan did "not mean that the ordinance and such application are to be controlled by the comprehensive plan."⁵⁷ Instead, the ordinance

(1974). Other states merely mention PUD in their enabling legislation, leaving implementation to the municipalities. ILL. ANN. STAT. ch. 24, § 11-13-1 (Smith-Hurd Supp. 1973); IND. ANN. STAT. § 53-756(7) (Burns 1974); N.Y. GEN. CITY LAW § 37 (McKinney 1968); N.Y. TOWN LAW § 281 (McKinney Supp. 1973); N.Y. VILLAGE LAW § 7-728 (McKinney Supp. 1973); OHIO REV. CODE ANN. § 303.22 (Supp. 1973); WIS. STAT. ANN. § 62.23(7)(b) (Spec. Pamphlet 1974).

51. The decision in *Doran* rests on specific legislative provisions rather than on vague notions of public welfare. This means that not only does the statute relieve the courts from making difficult policy decisions, but it also provides both the court and the developer with explicit standards. Such specificity eliminates the uncertainty that made PUD so undesirable to developers.

52. 10 Pa. Commw. at 151, 309 A.2d at 455.

53. PA. STAT. ANN. tit. 53, § 10402 (1972).

54. *Id.* § 10503.

55. *Id.* § 10606.

56. 10 Pa. Commw. at 152, 309 A.2d at 455.

57. *Id.* at 154, 309 A.2d at 456, citing PA. STAT. ANN. tit. 53, § 10703 (1972). This is the typical judicial interpretation of a comprehensive plan's effect. *See, e.g.*, Village 2 at New Hope, Inc. Appeals, 429 Pa. 626, 241 A.2d 81 (1968). The

was to be viewed as an amendment to the comprehensive plan.⁵⁸

Secondly, the Township argued that the development did not conform to local zoning regulations and so constituted an improper departure from the zoning ordinance.⁵⁹ The court believed, however, that the statute in fact contemplated the use of PUD to alter traditional zoning regulations. Relying on a rather vague provision of the PUD ordinance⁶⁰ and various provisions of the PUD enabling statute,⁶¹ and construing them in *pari materia* with a single case⁶² and the general nature of PUDs,⁶³ the court held that

a planned residential development must be judged by the standards set forth in a planned residential development ordinance and those standards may vary from the requirements of a municipality's zoning ordinance

It is the very essence of a planned residential development that it may diverge from zoning requirements.⁶⁴

The court also rejected the Township's third justification for denying approval—that the developer failed to set aside the required open space before beginning development. Requiring advance designation of open space has frequently led to unwise choices.⁶⁵ The court eliminated this requirement, finding adequate compliance with the PUD statute if the developer would eventually provide sufficient open space.⁶⁶ Moreover, the court considered it immaterial

courts are apparently allowing the PUD approval process to substitute for prior planning.

58. 10 Pa. Commw. at 154, 309 A.2d at 456.

59. *Id.* For a discussion of the presumption of validity accorded zoning ordinances see Annots., 86 A.L.R. 659 (1933); 54 A.L.R. 1030 (1928).

60. Muhlenberg Township, Pa., Ordinance No. 106, § 110.2, *quoted in* Doran Invs. v. Muhlenberg Township Bd. of Comm'rs, 10 Pa. Commw. 143, 154, 309 A.2d 450, 456 (1973), provides: "All existing ordinances or parts of ordinances which are contrary to the provisions of this ordinance are hereby repealed to the extent necessary to give this ordinance full force and effect."

61. PA. STAT. ANN. tit. 53, §§ 10705, 10707 (1972).

62. *Gettys v. Dillsburg Borough Council*, 7 Pa. Commw. 519, 300 A.2d 805 (1973).

63. The court held that PUDs, by their very nature, modify existing zoning ordinances. 10 Pa. Commw. at 155, 309 A.2d at 457.

64. *Id.* at 154, 309 A.2d at 456-57.

65. Krasnowiecki, *supra* note 3, at 50-52.

66. 10 Pa. Commw. at 157-58, 309 A.2d at 458.

that the open space was to be reserved to private rather than public use.⁶⁷

The *Doran* result is highly favorable to developers. The sole ground for disapproval of a plan that meets all the substantive requirements of the planned residential development ordinance (e.g., density, open space, height) is a finding that "circumstances of a particular matter [are] *so exceptional* as to support the conclusion that the plan in one or more respects, *stated 'with particularity,'* would not be in the public interest."⁶⁸ The decision is significant because the presumption of validity accorded a PUD plan that complies with the ordinance decreases investment risk and thereby encourages developers to use the PUD concept.

67. In support of its conclusion, the court noted that it would be unconstitutional for the Township to require public dedication of the land as a condition precedent to approval for a lawful use. *Id.*

Appellee also argued that the plan did not account for increases in traffic hazards and attendant noise and dirt. The court, however, observed that such conditions are inevitable and do not by themselves constitute sufficient reason to refuse a property owner the legitimate use of his land. *Id.* Under some circumstances, the police power, purportedly exercised in the public interest, may be invoked to prevent a developer's plan from being approved. Such a result generally rests on a common law nuisance theory. See ZONING DILEMMA, *supra* note 1, at 23.

Although appellant demonstrated that values of single-family dwellings near large apartment houses increased, appellee contended that the facts were not sufficient to make any finding on the project's effect on surrounding property values. The court noted, however, that because "the project would be an 'island . . . substantially different in character and visible appearances from the surrounding area' of single-family homes does not *ipso facto* demonstrate that the project will have an adverse effect on the neighborhood." Grouping uniform and conforming uses is basic to zoning but not to the PUD concept. The *Doran* court found that a "planned residential development is by its very nature visually different from the usual lot development dictated by so-called 'euclidean' zoning." 10 Pa. Commw. at 159, 309 A.2d at 459; see *Village of Euclid v. Ambler Realty Co.*, 272 U.S. 365 (1926); ZONING DILEMMA, *supra* note 1, at 32; FRONTIERS, *supra* note 5, at 100, Annot., 54 A.L.R. 1016 (1926). Had there been more specific findings on the question of adverse community effects the court might have upheld the board's denial on this point. See *RK Dev. Corp. v. City of Norwalk*, 156 Conn. 369, 242 A.2d 781 (1968).

Some issues not raised in *Doran* remain unresolved. It is not clear what effect PUDs will have on low-income groups and low-income housing. Part of this issue is the question whether racial integration will or can be advanced by the PUD concept. Mandelker, *supra* note 7, at 99-101. In addition, there remains the question whether the voice of the "neighboring challenger" has been silenced. Krasnowiecki, *supra* note 3, at 55-63; *Planned Unit Development*, *supra* note 7, at 710-12.

68. 10 Pa. Commw. at 159-60, 309 A.2d at 459 (emphasis added).

The advantage of certainty given the developer, however, may have been at PUD's expense. By removing virtually all discretionary authority from the planning commission, the court has eliminated the negotiation process considered essential to the PUD concept. The result may be a loss of control over the developer and his proposal that will render PUD a weak and ineffective tool for land use regulation. Without some discretionary control over planning elements, negotiations for innovative design concessions in return for approval cannot occur. Most significantly, municipalities deprived of all discretionary authority to prevent developer abuse will probably repeal their PUD ordinances and return to conventional zoning techniques to regain some measure of control. Ironically, *Doran* may actually relegate developers to traditional procedures.

The *Doran* court's interpretation of Pennsylvania's recent PUD statute was doubtless made possible by the broad statutory language. Since only a few states have adopted PUD statutes,⁶⁹ other communities may avoid a similar result by including provisions expressly giving greater discretion to the municipality. The difficulty becomes one of striking the correct balance between protecting the developer from arbitrary local decision-making and hamstringing the municipality with an overly rigid legal framework. *Doran* squarely presents the problem. Finding the solution will be a difficult and challenging task for local draftsmen.

Lloyd Mashita

69. See note 50 *supra*.

